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LEGAL  
CONSIDERATIONS  
ON THE  
REGENCY,  
AS FAR AS IT REGARDS  
IRELAND. K

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L O N D O N :

Printed for J. STOCKDALE, opposite Burlington-  
House, Piccadilly.

M.DCC.LXXXIX.

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CONSIDERATIONS



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1662  
STOCKDALE  
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## P R E F A C E.

**W**HILE the following papers were  
handing about in manuscript,  
the Irish Parliament has proceeded with  
such rapidity, as actually to decide on  
the points here intended to be contro-  
verted. However, the substance of the  
argument is still applicable to the pre-  
sent state of the Government. For,  
notwithstanding the recovery of his  
Majesty is now happily announced, it  
may still be thought adviseable to pro-  
vide some occasional assistance to relieve  
him from the immediate detail of bu-  
siness, till his health shall be more firmly  
established. Such subsidiary delegation  
of power will be provided by Parliament,  
and may by *possibility* be viewed by the

Irish



Irish with as little respect, as the measures they have just marked with so much disapprobation. In such case, the same reflections will arise on the part of Great Britain; and the same call will be made on those who pretend to knowledge in the Irish constitution to produce the arguments on which they defend their proceedings. In any event, the resolutions of the Irish Parliament ought not to pass unnoticed; if the reasoning here advanced is just, they are warranted neither by law nor by the constitution, and, to say the least of them, are utterly void.

It will appear from the perusal of these considerations that they were put into writing before the Regency bill was introduced into Parliament.

LEGAL



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L E G A L  
CONSIDERATIONS, &c.

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**I** HAVE been not a little astonished to hear it so openly declared, that the Irish *will make* the Prince of Wales Regent of Ireland without limitations. As I had not found that the Irish, since the time of Henry II. ever made a King; that they have any where an ancient crown and regalia; or that they have any household establishment for the state of a King, or any fleet, or army to give vigor and importance to the King of a separate kingdom; their intermeddling in the arrangement or

disposal of the Crown and authority, by which they have been so long governed, had, in my conception of their situation, something new and alarming.

I had conceived, that the Prince, when appointed Regent by the Parliament of England, would become, of course, Regent of Ireland; and if the limitations did not apply to Ireland, he would be Regent there without limitation; and I conceived that he would so continue, not because the Irish Parliament would have him so, (if such is their inclination) but because they have no authority to act in the disposal of the Royal state and dignity of the Crown of England.

When there arises a difference of opinion on points that concern the connection

nection and relative situation of these two countries, it is unfortunate for both, that there is no tribunal, no public assembly, where they can be agitated and determined upon fair argument. Such is the consequence of the late adjustment, which has withdrawn Ireland from the superintendence of the British Parliament. Since that, the connection between the two countries is sustained singly by the Crown, communicating independently with the Parliaments of both kingdoms. If, therefore, any question should be moved in the Irish Parliament, and their ultimate resolution should be such as may not be thought in England consistent with the sovereign authority of this kingdom, in what manner is it to be resisted or controverted? And should the Crown be advised to join its con-



sent to such resolutions, would not the difficulty be of a magnitude that would have a tendency to make a breach between the two kingdoms?

In such a crisis, where the interests of both sides are so nicely circumstanced, any question that bears an appearance like that now in agitation, cannot be examined with too much previous care and anxiety. It is with this view I take the liberty of submitting to the press, some few reflections on the notions laid now to be entertained by many of the Irish nation: an appeal to the people seeming to be the only mode left of discussing any point of national difference between the two kingdoms.

I have always understood, that Ireland is part of the dominions of the  
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Imperial Crown of Great Britain, *and that the Kings and Queens of England, are by undoubted right ipso facto Kings and Queens of Ireland.* Such are the very words in which Mr. *Molyneux* expresses his sense of this connection, (*Case of Ireland*, p. 108, edit. London, 1720.) It was under that construction that the Kings of England, upon their accession to the throne of this kingdom, have without farther ceremony or sanction, proceeded to administer the government of Ireland. No coronation, no act of the Legislature in Ireland, was thought necessary to complete the title to a dominion that belonged to, and therefore followed the destination which was made of, the Crown by the English Parliament.

Thus

Thus the dominion of Ireland continued to pass without any interposition or notice on the part of the Parliament of Ireland, till Henry VIII. chose to change his title of *Lord of Ireland* into that of *King of Ireland*; and then an act was passed in the Irish Parliament declaring, *that the King, his heirs and successors, Kings of England, shall be Kings of this land of Ireland, with all prerogatives to the estate and majesty of a King Imperial appertaining, and be named, reputed, and taken to be Kings of this land of Ireland, to have and enjoy the said style, title, majesty, and honors of King of Ireland, &c. as united and knit to the Imperial Crown of the realm of England.* (Irish Acts, Stat. 33. Hen. VIII, Stat. 1, c. 1. sect. 1.) An act which announces in the plainest terms, and upon the highest authority, the union  
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and dependence of the kingdom of Ireland with respect to the Crown of England. In conformity with such dependence and union, we have seen it follow in all successive changes and revolutions, the fortunes that attended the Crown of England. The island of Ireland, in that respect, seems to have differed in nothing from the islands of Jersey, or of Jamaica.

It is true, that there are in the Irish Statute Book, examples where that Parliament has confirmed or recognised settlements of the Crown made by the English Parliament; thus in 4th of William and Mary, an act was passed to recognise their title to that kingdom. But such instances, singled out from so many others of an opposite nature, are rather exceptions than authorities.

thorities. Besides, the adopting of an English act to recognise what had been before established in England, and this too at some distance of time after the event, seems a measure very different from that of *appointing* and *ordaining* from any substantive authority of their own. Such acts arose merely from a wish in the Government here to secure peace in critical times. Nobody ever doubted whether King William and Queen Mary had not as completely the sovereignty of Ireland during the first three years of their reign, as after the passing of that act. Indeed, the sovereignty of Ireland was expressly conferred, without any participation of the Irish nation, by the Lords and Commons of England, at the time they tendered the Crown to the Prince and Princess of Orange.

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To pass over the numberless instances where Ireland has followed the revolutions of English government, contenting herself with a tardy recognition suitable to the actual crisis of affairs, without having exercised any choice or authority of her own, it may suffice to mention, that the act of succession, Stat. 12 & 13 Will. c. 2. for establishing the present Royal family on the throne, was never formally passed in Ireland: but, what is very remarkable, in the second year of Queen Anne, it was by the Irish Parliament made treason to endeavour to disappoint the settlement made by that *English statute*; (See Irish Acts, Stat. 2. Ann. c. 5.) and this was not till after one limitation in the settlement, namely, that of Queen Anne herself, had taken place two years.



But such power as the English Parliament has to regulate the succession of the Crown, it surely has, *a fortiori*, to modify and direct the administration of the authority of the Crown. Accordingly we find, that the protectorate of the Duke of Gloucester, in the minority of Henry VI. was not recognised in Ireland by any legislative act; that Ireland was governed by the Protector in the reign of Edward VI. without any special provision by the Irish Parliament to confirm or recognise his authority; that the provision for the intermediate government, after the death of Queen Anne, as made by Stat. 6. Anne, c. 7. was not confirmed in the Irish Parliament, nor were either of the late statutes, viz. 25th Geo. II. c. or 5th Geo. III. c. 27, for providing a regency in case of a minority, passed,

passed, or formally recognised in Ireland.

Without entering more minutely into this deduction, it seems to me to be clear, that whatever doubts might subsist among speculators on government, respecting the power to bind the people of Ireland by English Acts of Parliament, and among prudent politicians, as to the expediency of exercising such power, those doubts, in the minds of the Irish themselves, were all confined to the internal affairs of that country, and arose from the consideration that Ireland was possessed of a national assembly fully competent, and probably better qualified, for the making regulations of a local nature; but that the Royal state and succession of the Crown, to which that kingdom be-

*longed*, was beyond the reach of their Parliament, and could only be regulated by the Parliament of England. Such seems to me to have been the opinion of the Irish themselves. The English have, on their part, steadily maintained their right, and have accordingly, by Stat. 6th Anne, c. 7. sect. 1. made it high treason to declare, that *the Kings and Queens of this realm, with and by the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to LIMIT and BIND THE CROWN, and the descent, limitation, inheritance, and GOVERNMENT thereof.* An act which deserves particular attention, on the present occasion, as it speaks of *LIMITING THE GOVERNMENT*, as well as the descent and succession of the Crown ; but particularly as it most clearly determines, that in the  
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judgement of the English Parliament, the Parliament of Ireland, any more than any other local legislature in the King's dominions, can have no voice upon this subject.

But it is said, that whatever the law and Constitution of the two countries, in this point, might be before the late adjustment made by Stat. 23 Geo. III. c. 28, that act is such a renunciation on the side of Great Britain, of all legislative coercion over Ireland, that any regulation now to be made by the English Parliament on this point, would be a breach of faith, and violation of that solemn compact.

To this I shall answer, that in my judgement, this act does not apply to the subject now in question. The  
words

words of the act are, *That the right claimed by the people of Ireland, to be bound only by laws enacted by his Majesty, and the Parliament of that kingdom, shall be established for ever, and shall at no time be questioned or questionable*: which law, I contend, was not meant to restrain the Parliament of Great Britain from making such laws respecting the Crown and its imperial authority, as shall bind the people of Ireland, for these reasons:

1<sup>st</sup>. Because the jealousy of the Irish nation was directed only against the Houses of Parliament in England, and not against the Crown, whose sovereignty was never contested, and is plainly acknowledged in the act. It could not therefore be the design of the framers of the act, to make any renun-

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ciation whatever of the power the English Parliament before possessed, of making laws respecting the Crown and its imperial authority, which would bind the people of Ireland.

2dly. Because, it being the common law of the land, confirmed by repeated usage, and most solemnly recognised by the before-mentioned act, Stat. 6 Anne, that the King and Parliament of this realm, and no other authority whatever, may limit and bind the Crown and Government thereof, the framers of the act, if they had meant to renounce so important a right, would have chosen some words more specific and direct than those in question.

3dly. Because the law will never permit a constitutional right, so firmly  
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established by the common law, and plainly and expressly confirmed by the above Statute 6 Anne, to be construed away by the wording of a clause, so short, so indirect, and so inapplicable as the present.

If, therefore, this statute has no influence upon the question, it stands clearly established upon the usage, opinions, and statutes of both countries, that Ireland, considered constitutionally, is upon the same foot with regard to the King and Government, as other dominions belonging to the Crown of Great Britain; whatever disposal or limitation is made thereof by the Parliament of Great Britain, must bind equally in Ireland, in America, and in the East and West Indies. The law of the Crown in Great Britain is the law of  
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the Crown in all its dominions and dependencies. Whosoever, and whatsoever is pronounced by that law, and by that Parliament, to be qualified to administer the Government of the British empire, becomes immediately competent to appoint Governors, and to fill the usual offices in all parts of the empire. The Lord Lieutenant of Ireland, so appointed, will be obeyed equally with the Governor of Jamaica, or Governor-General of Bengal. The Bishops and Judges so appointed in Ireland will be recognised as such by the people, the same as naval or military officers in the Indies. There can be no distinction, as far as constitutional right is considered, between Ireland, and any other part of the British dominions; and it was upon these considerations that I ventured to maintain, that the Regent, when ap-  
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pointed, would be Regent, of course, in Ireland, without limitations, not because the Parliament of Ireland might make him such, but because the Parliament of Ireland, any more than the Assembly of Jamaica, had no choice, or authority to intermeddle, in the disposal of the royal state and dignity of the imperial Crown of Great Britain.

But some, who, thinking the current of precedent is too strong to resist, admit that the royal authority, when constituted complete in all its parts, is intitled to obedience in Ireland, as well as all over the British empire, yet contend that the present limitations are of a nature wholly novel, and, being a fabrication of the British Parliament, they cannot bind Ireland, since the before-mentioned Stat. 23 Geo. III. and

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I believe it to be a very general opinion, that if the Regent is to be subjected to any limitations in Ireland, it must be done by the Irish Parliament. But I think this point has not been sufficiently considered.

In the first place, the objects of the limitations do not, all of them, exist in Ireland. What regards the King's household is peculiar to England; but peerages, places, and pensions, are grants belonging to the Crown to make in Ireland, equally with England. With respect to the disposal of these, I do not quite understand what is meant, when it is said, the people of Ireland will not be bound by the restriction on the Regent in these articles; for if *being bound* means being precluded from that to which a per-

son otherwise has a right (which I take to be its meaning) I do not see how any one can have a right to such *grants*, they being always supposed to flow from the spontaneous will of the Crown; no person, therefore, in Ireland seems to be much bound by this restriction; but rather the person who otherwise would have the *right to grant*,

The truth is, that by the limitations on the Regency, the people of England are no more *bound* than the people of Ireland; they are limitations to bind the Regent solely; and upon this view of the subject, I am inclined to encourage an opinion, that the present limitations made by the English Parliament may be so calculated as actually to bind in Ireland, the same as in England, and that the Regent will find himself, by construction

struction of law, if not expressly, limited in the exercise of those branches of prerogative in Ireland, without any such limitations being imposed by the Irish Parliament; and yet without any breach of the recent compact contained in the before-mentioned Stat. 23 Geo. III.

How the act of Parliament will be worded we do not know; but whether it expressly names peerages, places, and pensions *in Ireland*, or peerages, places, and pensions *generally*; I should think, upon the above reasoning, it would fairly follow, in either case, that the Regent could no more create Peers in Ireland, nor grant places or pensions there, or in the East or West Indies, than in England. There being but one Crown, which all the dominions thereof obey, and the law of that Crown being such as the usage and  
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Parliament of Great Britain dictate, whatever is so dictated, binds the Crown in all its dominions; it is settled, it is limited, it descends, it is committed to the care of protectors or regents alike, with respect to all its dominions; it is not considered differently in different kingdoms, islands, or territories. If the Regent, therefore, is forbid by those great authorities that dictate the law of the Crown, to exercise certain branches of prerogative, he is *bound*, if the words of limitation can so be construed, absolutely and universally; and in whatever part of his dominions he makes such a forbidden grant, the grant is void.

Can the people of Ireland say, that a grant made under such circumstances, of a place or pension, or peerage, is not void, because the people of Ireland, according

ing to Stat. 23 Geo. III. are not bound by the English Parliament? As well may a person who holds a lease granted under a power, but where the power is not pursued, maintain his right, and declare he is not bound by the deed containing the power, because he was no party to it.—The answer is, his lessor was a party, and the lessee could receive no more than the lessor had a right to grant. The Regent is the grantor, he receives his power from the Parliament, is bound by the limitations that authority has imposed; if he makes a grant not pursuant to such power, it is *ipso facto* void. The source from whence it purports to spring will testify against it, it is bad *ab origine*, and no kingdom or territory to which it may relate or appertain, can have authority to make it good.

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This disability so fixed upon *the person* of the Regent by the Parliament of Great Britain would, therefore, in my opinion, have its complete operation in Ireland, and this would by law continue in spite of any resolutions of that Parliament to set him free.

Upon the whole, the sum of what I mean to contend for is this,

1st. That the Parliament of Great Britain has the *sole* right to appoint a Regent, so as to bind the kingdom of Ireland, notwithstanding the Stat. 23 Geo. III. c. 28. because the right in the British Parliament to limit the Crown and its government, is not renounced by that statute.

2dly. That the limitations on such Regent, if so expressed, as to extend to



the kingdom of Ireland, will have operation there, notwithstanding the aforesaid Stat. 23 Geo. III. as well, because the right to limit the Crown and its government was not renounced by that Statute, as because the limitations in question do not bind the people of Ireland, but, in their nature, are binding only on the Regent.

Such are the positions which appear to me to arise from a consideration of the constitution of Ireland, as connected with the Crown of Great Britain. They present a subject that deserves a more profound investigation, than it is intended, at present, to undertake. The short manner in which it is here opened, is sufficient in my mind to shew, that there is some reason on the side of Great Britain, when she maintains her absolute

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authority to limit the government and administration of the Crown according to the condition of the Royal State, and the exigencies of the empire; and I should be glad to hear, what argument is meant to be urged on the part of Ireland for assuming a right to interfere therein, otherwise than by an entire concurrence and approbation.

This is said with all due regard for the kingdom of Ireland, which is the brightest jewel in the British Crown, but which will lose much of its value, if it is to set an example to the rest of the empire, of encroaching on the established authority of the British Parliament, and dissolving the unity and solidity of the Imperial Crown of these realms.